

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IRON MOUNTAIN (NEDERLAND) DATA
CENTRE GERMANY B.V.,

Plaintiff,

v.

WSP USA INC. *f/k/a* KW MISSION CRITICAL
ENGINEERING, DPC; and WSP USA
BUILDINGS, INC. *f/k/a* KW MISSION
CRITICAL ENGINEERING, DPC,

Defendants.

WSP USA BUILDINGS, INC. *f/k/a* KW
MISSION CRITICAL ENGINEERING, DPC,

Third-Party Plaintiff,

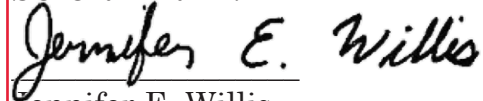
v.

AECOM LIMITED, AECOM
INFRASTRUCTURE & ENVIRONMENT UK
LIMITED, and TTSP HWP
PLANUNGSGESELLSCHAFT mbH,

Third-Party Defendants.

The Parties shall provide another status
update by **October 31st**.

SO ORDERED.



Jennifer E. Willis
United States Magistrate Judge

September 27, 2024

Civil Action No. 1:23-cv-2858

JOINT DISCOVERY STATUS LETTER

Pursuant to Section 13(b) of the Civil Case Management Plan and the Court's order (ECF No. 143), the Parties submit this joint discovery status letter.

The Parties further advise that they have been working diligently to schedule the final 3 corporate representative depositions. Given the availability of corporate representatives and their counsel for these depositions, which will take place in New York and in London, the Parties may soon file a joint motion requesting a short extension of the remaining case deadlines.

A. Discovery Taken Place**1. Discovery Requests and Written Responses**

The discovery requests and written responses by the Parties are as follows:

Date Served	Propounding Party	Discovery Requests	Receiving Party	Written Response Date / Deadline to Respond
6/15/23	Iron Mountain	First Set of RFPs, RFAs, and ROGs	WSP	7/17/23
6/23/23	WSP	First Set of RFPs and ROGs	Iron Mountain	8/22/23 ¹
7/20/23	Iron Mountain	First Set of RFPs, RFAs, and ROGs	WSP	8/17/23 (RFAs) 9/20/23 (RFPs & ROGs)
9/1/23	Iron Mountain	Second Set of RFPs	WSP	10/2/23
10/9/23	Iron Mountain	Third Set of RFPs	WSP	11/7/23
11/13/23	Iron Mountain	Second Set of ROGs	WSP	12/28/23
11/13/23	Iron Mountain	First Set of RFPs, RFAs, and ROGs	AECOM	12/20/23
11/17/23	WSP	First Set of RFPs and ROGs	AECOM	12/20/23
12/19/23	Iron Mountain	First Set of RFPs, RFAs, and ROGs	TTSP	2/2/2024
12/27/23	WSP	First Set of RFPs and ROGs	TTSP	2/2/2024
12/22/23	AECOM	First Set of RFPs and ROGs	Iron Mountain	1/22/24 (RFPs); 2/5/24 (ROGs)
12/22/23	AECOM	First Set of RFPs and ROGs	WSP	1/30/24
2/5/2024	TTSP	First Set of RFPs	Iron Mountain	3/6/2024
2/5/2024	TTSP	First Set of RFPs	WSP	3/14/2024
3/11/2024	WSP	Second Set of RFPs	Iron Mountain	4/10/2024
3/15/2024	TTSP	First Set of ROGs	Iron Mountain	4/15/2024

¹ Iron Mountain served amended and supplemental responses to WSP's interrogatories on November 22, 2023, February 5, 2024, and April 15, 2024.

In addition to exchanging several document requests, Iron Mountain, WSP, and AECOM have agreed to the terms of an ESI protocol, and the Parties agreed to the Stipulated Protective Order (ECF No. 47, amended at ECF Nos. 92, 93). The Parties have also agreed to produce documents on a rolling basis.

The Parties have made document productions on a rolling basis as follows:

Iron Mountain's Productions						
# Prod.	Date of Prod.	# Docs.	# Emails	# Pages	Volume of Native Files	Volume of Production File
1	9/1/23	1,207	579	5,921	1.3 GB	3.22 GB
2	9/11/23	1,479	1,412	2,910	171 MB	1.4 GB
3	9/20/23	1,556	1,444	4,672	327 MB	2.25 GB
4	9/29/23	2,081	1,747	7,811	1.35 GB	3.68 GB
5	10/20/23	2,163	1,967	13,286	836 MB	6.08 GB
6	11/24/23	22,516	4,163	176,456	34.9 GB	91 GB
7	12/28/23	14,868	5,236	91,713	13.16 GB	32.05 GB
8	2/9/24	1,227	518	11,518	1.01 GB	5.50 GB
9	3/14/24	2	1	26	2.48 MB	2.88 MB
10	3/14/24	2,966	228	18,700	5.27 GB	9.91 GB
11	3/29/24	8,330	5,345	47,584	5.89 GB	21.8 GB
12	4/5/24	804	52	3,676	839.4 MB	1.66 GB
13	4/30/24	3	0	19	5.5 MB	48.2 MB
14	8/2/24	4,759	1,855	36,809	5.3 GB	18.8 GB
TOTALS		63,669	24,547	421,101	70.34 GB	206.35 GB

kW's Productions						
# Prod.	Date of Prod.	# Docs.	# Emails	# Pages	Volume of Native Files	Volume of Production File
1	10/19/23	7,049	162	34,307	15.92 GB	33.68 GB
2	12/21/23	3,838	48	23,353	14.79 GB	29.90 GB
3	12/28/23	45,302	25,618	176,938	32.98 GB	108.3 GB
4	2/2/24	7,417	3,836	50,175	6.51 GB	35.80 GB
5	2/13/24	189	0	533	39 MB	215.6 MB
6	3/8/24	1,779	1,044	11,183	1.72 GB	3.5 GB
7	3/18/24	11	4	75	3.66 MB	4.69 MB
TOTALS		65,585	30,712	297,331	71.96 GB	211.40 GB

AECOM's Productions						
# Prod.	Date of Prod.	# Docs.	# Emails	# Pages	Volume of Native Files	Volume of Production File
1	12/4/23	2	0	2	N/A	N/A
2	3/07/24	568	4	1051	444 MB	1.75 GB
3	4/5/24	1,056	667	7,110	N/A	4.33 GB
4	4/11/24	1,116	650	9,290	N/A	3.87 GB
5	4/18/24	5,434	1,658	50,609	N/A	24.2 GB
6	5/22/24	3,700	2,085	31,398	N/A	14.80 GB
7	9/6/24	5,411	3,143	38,842	N/A	19.9 GB
8	9/16/24	1,206	351	14,477	N/A	3.49 GB
TOTALS		18,493	8,558	152,779	444 MB	72.34 GB

TTSP's Productions						
# Prod.	Date of Prod.	# Docs.	# Emails	# Pages	Volume of Native Files	Volume of Production File
1	1/5/24	10	0	120	N/A	N/A
2	1/12/24	1	0	36	N/A	N/A
3	2/2/24	1	0	1	N/A	N/A
4	2/16/24	8,599	43	24,948	N/A	26.59 GB
5	3/15/24	25,750	11,621	111,056	N/A	91 GB
6	3/20/24	24,071	11,325	108,463	N/A	94.8 GB
7	4/2/24	7,370	4,200	40,017	N/A	38.4 GB
8	4/5/24	10,537	4,512	31,300	N/A	22.07 GB
9	4/17/24	3,872	2,349	11,042	N/A	7.47 GB
TOTALS		80,211	34,050	326,983	N/A	280.33 GB

B. Remaining Discovery**1. Written Discovery**

All written discovery responses have been served.

2. Document Discovery

Following AECOM's supplemental production of documents on May 22, 2024, planned document discovery was complete. On June 19, 2024, Iron Mountain raised certain issues with AECOM's search terms and document collection/production, and WSP raised certain issues with Iron Mountain's and AECOM's search terms and document collection/production. Following meet and confers, Iron Mountain made supplemental document production, as indicated above. Iron Mountain further intends to supplement a small set of documents related to the areas of inquiry from kW's Second Request for Production of Documents dated March 11, 2024, outlined in WSP's letter to the Court dated July 12, 2024 (ECF No. 142). Iron Mountain is working to obtain the small set of documents and expects to make this production in the coming weeks.

AECOM also supplemented its production concerning project related claim subject matter areas, using the same search terms and phrases employed by Iron Mountain to identify electronically stored information related to those subject matter areas, and also supplemented its production concerning project acoustics.

3. Depositions

To date, the following depositions have been completed:

Depo. #	Date	Witness (Party)	Location	Noticing Parties
1	2/21/24	Mr. Alex Sharp (IRM)	London, UK	WSP
2	2/23/24	Mr. Paul Hazell (IRM)	London, UK	WSP
3	2/26/24	Mr. Damir Strahinjic (IRM)	London, UK	WSP
4	2/27/24	Mr. Robert King (Third-Party)	Albany, NY	Iron Mountain
5	3/1/24	Mr. James Warren (WSP)	New York City, NY	Iron Mountain
6	3/4/24	Mr. James Ball (WSP)	New York City, NY	Iron Mountain
7	3/5/24	Mr. Robert Eichelman (WSP)	New York City, NY	Iron Mountain
8	3/12/24	Mr. Vince Coyle (IRM)	Pittsburgh, PA	WSP
9	3/25/24	Mr. Chris Guilmette (Third-Party)	Albany, NY	WSP
10	3/26/24	Mr. Kevin O'Brien	Albany, NY	Iron Mountain
11 & 12	4/25/24 & 4/26/24	Mr. Alex Hauser (TTSP) (Individually and Corp Rep)	London, UK	WSP/Iron Mountain

13	7/9 - 7/10	Mr. Brian McClure (AECOM)	London, UK	WSP
14	7/10 - 7/11	Mr. Steve Jones (AECOM)	London, UK	WSP
15	7/11	Mr. David Gooderham (WSP)	London, UK	Iron Mountain

The Parties agree that the following corporate representative depositions remain to be taken and are working diligently to schedule them:

Depo. #	Witness (Party)	Noticing Party
16	AECOM Corp Rep(s)	WSP/Iron Mountain
17	WSP Corp Rep	Iron Mountain/TTSP/AECOM
18	Iron Mountain Corp Rep	WSP/TTSP/AECOM

D. Mediation

The Parties initially scheduled a 2-day mediation on March 14 and 15 with the Honorable Barbara S. Jones (Ret.) of Bracewell LLP. All Parties exchanged mediation statements on March 1. On March 4, Iron Mountain advised AECOM and TTSP that Iron Mountain had conferred with WSP and that Iron Mountain had concluded that mediation would not be productive if it proceeded on the agreed-upon dates. Iron Mountain wrote to Judge Jones the next day, March 5, requesting that she remove the mediation from the calendar. Judge Jones did so.

Pursuant to the Court's order (ECF No. 135 at 4), the current deadline for mediation is 30 days following the close of expert discovery on March 28, 2025.

E. Procedural History

1. What pleadings have been filed, who filed each pleading and on what date?

On April 5, 2023, Iron Mountain filed the Complaint against then-defendant WSP USA, Inc. (ECF No. 1.)

On May 29, 2023, WSP USA, Inc. filed an answer with counterclaim. (ECF No. 23.)

On June 12, 2023, WSP USA Inc. filed an amended answer with counterclaim. (ECF No. 24.)

On June 12, 2023, Defendant filed a third-party complaint against AECOM and TTSP. (ECF No. 26.)

On June 16, 2023, Iron Mountain filed the Amended Complaint that officially added Defendant as a party. (ECF No. 30.)²

² Around May 31, 2023, WSP USA, Inc. discovered that the WSP entity that actually acquired kW Mission Critical Engineering, dpc ("kW") was then non-party "WSP USA Buildings,

On July 17, 2023, WSP USA, Inc. and Defendant filed an answer with counterclaims (ECF No. 35) in response to the Amended Complaint.

On July 28, 2023, WSP USA, Inc. and Defendant filed the Third-Party Complaint against AECOM and TTSP. (ECF No. 36.)

On July 31, 2023, Iron Mountain filed an answer to the answer with counterclaims filed by WSP USA, Inc. and Defendant. (ECF No. 31.)

On August 1, 2023, WSP USA, Inc. and Defendant, pursuant direction from the Clerk, filed an “Amended Third-Party Complaint.” (ECF No. 40.)

On October 4, 2023, Iron Mountain and WSP USA, Inc. filed a Joint Stipulation of Dismissal, which dismissed without prejudice all claims filed by Iron Mountain against WSP USA, Inc. as well as all counterclaims filed by WSP USA, Inc. against Iron Mountain. (ECF No. 55.) The Joint Stipulation of Dismissal did not impact Iron Mountain’s claims against Defendant or Defendant’s claims against Iron Mountain. (*Id.*) On October 10, 2023, the Court entered an order formalizing the Joint Stipulation of Dismissal. (ECF No. 56.)

On November 6, 2023, AECOM appeared in the case (ECF Nos. 65–65), following service of process in October 2023 (ECF Nos. 74–75).

On December 6, 2023, TTSP appeared in the case (ECF No. 76), following service of process in November 2023 (ECF No. 88).

On January 17, 2024, the Court held a status conference with all the Parties regarding the status of discovery and the pre-motion letters of AECOM and TTSP regarding proposed motions to dismiss. (ECF Nos. 90, 95.)

On January 18, 2024, the Court entered the Third Amended Civil Case Management Plan and Scheduling Order. (ECF No. 96.)

On February 16, 2024, TTSP filed its answer and counterclaims in response to WSP’s Amended Third-Party Complaint. (ECF No. 106.)

On February 28, 2024, AECOM answered WSP’s Amended Third-Party Complaint. (ECF Nos. 110–11.)

On March 8, 2024, WSP filed its answer to TTSP’s counterclaims (ECF No. 113; *see also* ECF No. 114 (refiled).)

Inc.” kW was the predecessor entity that contracted with Iron Mountain to provide design services and design project management for the hyperscale data center at issue.

2. What motions, if any, have been filed, who filed each motion and on what date each motion was filed?

On August 1, 2023, Iron Mountain and WSP filed a joint letter motion requesting modification of certain deadlines in the Civil Case Management Plan and Scheduling Order. (ECF No. 44.) On August 3, 2023, the Court granted the joint motion (ECF No. 48) and entered the Amended Civil Case Management Plan and Scheduling Order (ECF No. 49).

On August 22, 2023, Defendant filed a letter requesting a pre-motion conference regarding a then-anticipated motion seeking an order appointing Celeste Ingalls as international process server. (ECF No. 51.) On August 23, 2023, the Court entered an order appointing Ms. Ingalls as the authority and judicial officer competent under the jurisdiction of the Court to assist in serving the Foreign Third-Party Defendants in accordance with the Hague Service Convention. (ECF No. 52.)

On October 16, 2023, Defendant filed a letter requesting a pre-motion conference regarding an extension of time to serve TTSP. (ECF No. 57.) The next day, the Court granted Defendant an additional 30 days to serve TTSP and requested a joint status update. (ECF No. 58.)

On October 18, 2023, AECOM was served. (ECF No. 67 at 1.) On November 6, 2023, AECOM filed a letter motion requesting a 30-day extension of time (to December 8, 2023) to respond to the Amended Third-Party Complaint (*id.*), which the Court granted (ECF No. 68).

On November 21, 2023, Defendant filed a letter requesting a pre-motion conference and an additional 30 days (until December 28, 2023) to serve TTSP. (ECF No. 71.) The next day, the Court granted Defendant an additional 30 days to serve TTSP. (ECF No. 72.)

On December 27, 2023, the Parties filed a joint motion to extend discovery deadlines (ECF No. 85), which the Court granted on December 29, 2023 (ECF No. 86).

On February 15, 2024, Iron Mountain filed a pre-motion letter requesting a discovery conference regarding WSP's non-production of certain documents and Mr. David Gooderham for deposition. (ECF No. 104.) In separate orders, the Court granted Iron Mountain's requests regarding the document issues (ECF Nos. 108, 112), and denied Iron Mountain's request for a deposition of Mr. Gooderham "without prejudice to renewal after its review of those documents" (ECF No. 108).

On March 18, 2024, WSP filed a pre-motion letter requesting a discovery conference regarding an extension of the fact discovery deadline and seeking the production of the other parties' "project files," by which WSP means all documents relating to the construction project at issue in this case.³ (ECF No. 115.) On March 19, 2024, the Court terminated WSP's letter motion and ordered the Parties to "meet and confer and agree on what discovery remains to be completed and propose dates certain for each item between now and any proposed extended discovery deadlines." (ECF No. 116.)

³ TTSP agreed to produce its project file.

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On April 9, 2024, WSP filed its Document 1-6 seeking an order compelling Iron Mountain and AECOM to produce their respective “project files” (ECF No. 122), or, alternatively, an order compelling Iron Mountain to supplement its interrogatory responses and Rule 26 disclosures to provide sufficient detail to identify which portions of the project’s design and construction are in issue in the case and compelling Iron Mountain and AECOM to respond to WSP’s request that they identify the document custodians from whom project records were collected, the time period for collection, the search terms used to identify potentially responsive material, the volume of potentially responsive material collected, the search terms used to cull the collected material and any other criteria used to eliminate collected documents and communications from the documents ultimately produced.

On May 16, 2024, the Court denied WSP’s request for Iron Mountain and AECOM to produce their respective “project files,” denied without prejudice WSP’s alternative request that Iron Mountain supplement its interrogatory responses and Rule 26 disclosures, and granted WSP’s alternative request for information about custodians and search terms. (*See* ECF No. 128.)

On May 30, 2024, the Court granted Iron Mountain’s request to depose Mr. David Gooderham. (ECF No. 135.)

3. What motions, if any, are currently pending and, for each pending motion, the date it was or is scheduled to be fully briefed?

None.

Dated: September 27, 2024

/s/ Kyle Maury
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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kyle Maury, certify that on September 27, 2024, I electronically filed the foregoing document with the Clerk of Court using CM/ECF, which sent electronic notice to all parties of record.

/s/ Kyle Maury
Kyle Maury